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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (C) No. 3397 of 2007

Petitioners

1. Vimla Jatav, aged 40 years Wd/o. Late Banshidhar Jatav
2. Sandeep Jatav, aged 17 years, S/o. Shri Banshidhar Jatav
3. Rajan Jatav, aged 15 years S/o. Late Banshidhar Jatav
4. Ku. Ekta Jatav, aged 13 years, D/o Late Banshidhar Jatav,
5. Sagar Jatav, aged 9 years, S/o. Late Banshidhar Jatav

No.2 to 5 minors through natural guardian mother petitioner No.1 all resident of village Nayakbandha, Pandepara, Abhanpur, Tahsil and District Raipur (C.G.)

Versus

Respondents

1. Uday Shankar Mishra, S/o. Shri P.L. Mishra, R/o. Amera, Post Chandi, P.S. Abhanpur, Abhanpur Tahsil and District Raipur (C.G.)
2. The Oriental Insurance Company Limited, Through : Divisional Manager, Divisional Office Madina Building, Jail Road, Raipur, City, Tahsil and District Raipur (C.G.)

(Writ Petition under Article 226/ 227 of the Constitution of India)

SB: Hon'ble Mr. Justice Satish K. Agnihotri

Present: Shri Raghavendra Pradhan, counsel for the petitioners.

ORAL ORDER
(Passed on 21st June, 2007)

1. By this petition filed under Article 227 of the Constitution of India, the petitioners impugns the legality and validity of the order dated 02-05-2007 (Annexure P-1), whereunder the respondent No.2 insurance company has been permitted to defend the claim case on behalf of the respondent No.1 also.

2. The relevant facts for the purpose of adjudication of this petition are that the petitioners-claimants have filed a claim case under the provisions of Section 170 of the

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Motor Vehicles Act, 1988 (hereinafter referred to 'the Act 1988'). The respondent No.2 Insurance Company filed an application under sub-section (b) of the Section 170 of the Act, 1988 in pending Claim Case No.60 of 87 (Vimla Jatav and Others Vs. Uday Shanker Mishra and another), pending before the 10th Additional Motor Accident Claims Tribunal, Raipur, on the ground that the owner of the vehicle against whom the claim case is filed has failed to contest and defend the case properly.

3. The Tribunal after hearing all the parties and considering the reply filed by the claimants-petitioners came to the conclusion that the respondent no.2 has established the fact that the respondent No.1 has failed to contest the claim case properly and allowed the application of the respondent No.2 filed under Section 170 (b) of the Act, 1988.

4. Learned counsel appearing for the petitioners submits that the applicant (Insurance Company) seeking permission under the provisions of Section 170 of the Act, 1988 has to satisfy both the conditions as enshrined in Sub-Section (a) and (b) of 170 of the Act, 1988. The learned counsel relied on a decision of the Kerala High Court in **National Insurance Company Ltd. Vs. Mery Zenet** [1]. It is beneficial to quote the provisions of Section 170 of the Act, 1988, which reads as under :

> "170. **Impleading insurer in certain cases.**- Where in the course of any inquiry, the Claims Tribunal is satisfied that -
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> (a) there is collusion between the person making the claim and the person against whom the claim is made, or
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> (b) the person against whom the claim is made has failed to contest the claim,

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> it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

5. The provision of the Section 170 (a) and (b) is clear and unambiguous. It is trite that the provisions of law need no aid for interpretation, if the provision is unambiguous and clear. Section 170 of the Act, 1988 makes it clear that the Tribunal has to satisfy itself either on the conditions available under Section 170 (a) or conditions available under Section 170 (b). It is necessary to satisfy either of the two conditions, as enshrined in (a) and (b) of the Section 170 of the Act, 1988.

6. Having heard learned counsel for the petitioners, I have gone through the judgment and order passed by the learned Tribunal and perused the documents appended thereto.

7. It is true that the Tribunal has satisfied itself with regard to the fact as to whether a person, who is owner, against whom the claim is made, has failed to contest the claim or not. The impugned order is unexceptionable and it does not warrant any interference.

8. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity,

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irregularity or illegality in the process of decision, not in the decision itself.

9. In view of the foregoing discussion, I do not find any manifest and apparent error on the face of the proceedings. As a result, this petition is dismissed, summarily.

Sd/-
Satish K. Agnihotri
Judge

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1. 1999 (1) Motor Claim Cases 193

Karuna